

Appl. No. 10/074,602  
Amdt. dated July 8, 2003  
Reply to Office Action. of April 8, 2003

### **REMARKS/ARGUMENTS**

This amendment is filed in response to the Office Action mailed April 8, 2003. At that time, claims 1-35 were pending in the application. In the Office Action, the Examiner required that the Applicants affirm their prior provisional election of species Group I, embodied in claims 1-27. Additionally, with respect to the substantive examination of the claims, the Examiner rejected claims 1-4, 6-9, 11, 13-16, and 18-21 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,164,383 issued to Thomas (hereinafter "Thomas") in view of by U.S. Patent No. 5,992,528 issued to Parkinson *et al.* (hereinafter "Parkinson"). Claims 5 and 17 were also rejected under §103(a) as being unpatentable over Thomas in view of Parkinson and in further view of U.S. Patent No 5,941,315 issued to Lai *et al.* (hereinafter "Lai"). Claims 10 was rejected under §103(a) as being unpatentable over Thomas in view of Parkinson and in further view of U.S. Patent No 5,207,276 issued to Scofield (hereinafter "Scofield"). Claim 12 was rejected under §103(a) as being unpatentable over Thomas in view of Parkinson and in further view of U.S. Patent No 5,660,236 issued to Sears *et al.* (hereinafter "Sears"). Claim 22 was rejected under §103(a) as being unpatentable over Thomas in view of Parkinson and in further view of U.S. Patent No 6,378,617 issued to Brennan (hereinafter "Brennan"). Claims 23-24 and 26-27 were rejected under §103(a) as being unpatentable over Thomas in view of Parkinson and Brennan, and in further view of Scofield. Finally, claim 25 was rejected under §103(a) as being unpatentable over Thomas in view of Parkinson, Brennan, and Scofield, and in further view of Sears.

By this amendment, claims 28-35 have been withdrawn, claim 22 has been cancelled, and claims 1 and 13 have been amended. In view of these changes and the following remarks, claims 1-21 and 23-27 are presented for reconsideration by the Examiner.

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### **RESTRICTION REQUIREMENT**

In accordance with the restriction requirement found in paragraphs 1-3 of the Office Action, the Applicants formally affirms its provisional election without traverse to prosecute the invention of species Group I, claims 1-27.

### **REJECTION OF INDEPENDENT CLAIMS 1 AND 13**

By this amendment, independent claims 1 and 19 have been amended to contain the limitation that the modular distribution line comprises a fastener on each end, such that the fasteners allow modular distribution lines to be removably connected to a manifold, the nozzle, and each other by way of a coupler. These claims are similar in scope to original (now cancelled) claim 22 which was rejected under 35 U.S.C. §103(a) in light of the combined teachings of Thomas, Parkinson, and Brennan. *See* Office Action & 11. The Applicants respectfully assert that such a §103(a) rejection is improper because these references cannot properly be combined, and that even if such a combination were possible, the combination still would not yield the present invention.

### **A Prima Facie Case of Obviousness Has Not Been Made**

The Applicants respectfully submit that the Examiner has not established a *prima facie* case of obviousness. It is well settled that the PTO has the burden to establish a *prima facie* case of obviousness. MPEP §2142. "If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness." *Id.* A *prima facie* case of obviousness under §103 is established only if the Examiner shows that (1) there is some teaching, suggestion, or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings; (2) there is a reasonable expectation of success; and (3) the prior art teaches or suggests all of the claim limitations. *Id.*

1. All of the Claim Limitations Have Not be Taught

In order to establish a prima facie case of obviousness, the cited references must teach or suggest all of the limitations found in the present claims. *See* MPEP §2143.03. As noted above, the present claims have been amended to include the limitation that the “modular distribution line comprises a fastener on each end, such that the fasteners allow modular distribution lines to be removably connected to a manifold, the nozzle, and each other by way of a coupler.” As noted by the Examiner, neither Thomas nor Parkinson disclose anything related to any type of fastener attached to a modular distribution lines.

To the extent that Brennan’s tee fittings 86 may be considered a “fastener,” these tee fittings 86 do not satisfy the limitations found in the plain language of the present claims. Brennan teaches that these tee fittings 86 connect together two of the hoses 45-48, 50-52 and/or connect together one of the hoses 45-48, 50-52 with one of the spray bars 80-83. *See* Brennan Col. 3, lines 4-31; Figures 3 and 4. However, there is no teaching or suggestion in Brennan that the tee fittings 86 provide for a *removable* connection. Moreover, Brennan does not teach that the tee fittings 86 may also attach to a manifold or a nozzle as required by the present claims. On the contrary, Brennan specifically teaches that the nozzles 60-63 are not attached to the tee fittings 86, but rather, the “nozzles 60-63 are *mounted on the spray bars 60-63....*” Brennan, Col 3, lines 4-6. Finally, the present claims state that the fastener allows connection of two distribution lines “by way of a coupler.” The Applicant can find no structure in Brennan that discloses such a coupler, let alone any indication of how tee fittings 86 would interact with such a coupler.

Accordingly, the Applicants submit that the combination of references cited by the Examiner does not teach or suggest the limitation found in claims 1 and 13 that the modular distribution line comprises a fastener on each end, such that the fasteners allow modular distribution lines to be removably connected to a manifold, the nozzle, and each other by way of

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a coupler. Therefore, this combination of references does not render claims 1 and 13 *prima facie* obvious under §103(a). Withdrawal of this rejection is respectfully requested.

2. There is No Teaching To Combine Thomas, Parkinson, and Brennan

The mere fact that references can be combined or modified does not render the resultant combination obvious unless there is some teaching that suggests the desirability of the combination. *See e.g., In re Mills*, 16 USPQ2d 1430, 1432 (Fed. Cir. 1990). In other words, even if all of the claimed elements are disclosed by the references, the claimed invention cannot be said to be obvious without some objective evidence of record that indicates why one of ordinary skill in the art would have been prompted to combine the teachings of the references and arrive at the claimed invention. *See* MPEP §2143.01; *In re Lee*, 61 USPQ2d 1430, 1433 (Fed. Cir. 2002).

In the present case, both Thomas and Parkinson teach fire-extinguishing systems that are designed for general use in a variety of different locations and environments including “automobiles... houses, offices, and other areas where fire protection is desired.” Thomas, Col. 2, lines 5-7; *see also* Parkinson, Col. 1, lines 28-32; Parkinson Col. 1, lines 43-48. Accordingly, both Thomas and Parkinson teach fire extinguishers that use generic and commonly used fire-extinguishing agents such as powders, gases, and the like that are designed to fight the fire by extinguishing or suppressing combustion. *See e.g.,* Thomas, Col. 2, lines 16-19; Parkinson, Col. 1 17-25; Parkinson Col. 1. 52-55.

Brennan on the other hand, has been designed to be used in a distinct type of environment and uses a completely different type of fire extinguishing agent. More specifically, Brennan teaches a highly specialized fire extinguishing and prevention system that has been specifically designed for use on ladle carriers, pot carriers, slag carriers, front end loaders, and other construction vehicles that carry or move molten steel or slag such as. *See e.g.,* Brennan, Col. 1, lines 10-16; Col. 2, lines 8-17. Because of the extreme heat and fire dangers associated with transporting molten steel and slag, the fire extinguishing agent used on these vehicles must not

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only be capable of rapidly extinguishing a fire, but perhaps more importantly, the agent must also be able to rapidly cool superheated materials in order to prevent heat and fire damages from ruining the vehicle and/or severely injuring the vehicle occupant. *See e.g.*, Brennan Col. 1, lines 20-40. Thus, Brennan teaches a system sprays a liquid surfactant based wetting agent onto portions of the vehicle and/or the vehicle occupant in order to extinguish any flames and rapidly reduce the radiant and ambient heat produced by the fire and/or the molten metal. *See* Brennan, Col. 2, lines 38-55; Col. 3, lines 60-Col. 3, lines 18; Col. 4, lines 55-65; Col. 5, lines 8-12.

Such differences between the conventional fire extinguishers taught by Thomas and Parkinson and the specialized heavy machinery extinguisher taught by Brennan are even more significant given that Brennan specifically dismisses conventional fire extinguishers as being inadequate and limited. *See e.g.*, Brennan, Col. 1, lines 17-32. In fact, the object of Brennan's invention was to develop and new fire extinguishing system that would overcome the drawbacks and limitations associated with these conventional fire-extinguishing systems. *See id.*

Accordingly, the Applicants submit that there is no teaching or suggestion that would have led one of ordinary skill in the art to combine the teachings of Brennan with the systems described by Thomas and Parkinson. Therefore, this combination of references may not be used to reject the present claims under §103(a). Withdrawal of this rejection is respectfully requested.

#### **REJECTION OF DEPENDENT CLAIMS 2-12 AND 14-27**

As described in greater detail above, the Examiner rejected dependent claims 2-12 and 14-27 under 35 U.S.C. §103(a) as being unpatentable over various combinations of Thomas, Parkinson, Lai, Scofield, Sears, and Brennan. *See* Office Action ¶¶ 8-13. Claim 22 has been cancelled. With respect to claims 2-12, 14-21, and 23-27, the Applicants respectfully traverse this rejection.

It is well settled that if an independent claim is patentable over the cited prior art, then all claims that depend from that independent claim are similarly patentable. *See In re Sernaker*, 217

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USPQ 1, 3 (Fed. Cir. 1983); *Hartness International, Inc. v. Simplimatic Engineering Co.*, 2 USPQ2d 1826, 1831 (Fed. Cir. 1987). As described above, independent claims 1 and 13 are patentable over the cited references and thus, claims 2-12, 14-21, and 23-27 that depend from independent claims 1 and 13 are similarly patentable. Withdrawal of these rejections is respectfully requested.

### CONCLUSION

In view of the foregoing, the Applicants submit that claims 1-21 and 23-27 are in a condition for immediate allowance. If there are any remaining issues preventing allowance of the pending claims that may be clarified by telephone, the Examiner is requested to call the undersigned.

Respectfully submitted,



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